

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of

Mike Morrison  
3880 Nowlin Road  
Kennesaw, GA 30144

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File Number: EB-00-AT-1083

NAL/Acct. No.: X3248005

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: October 11, 2000**

By the Enforcement Bureau, Atlanta Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Mike Morrison ("Morrison"), a.k.a. Morrison Sales Company, has apparently violated Section 302 of the Communications Act of 1934, as amended<sup>1</sup> ("the Act"), by marketing a non-compliant transmitter ("SKY-2000") for use in the FM broadcast band. We conclude that Morrison is apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000).

**II. BACKGROUND**

2. On September 28, 1999, agents from the Enforcement Bureau's Atlanta Office began an investigation into the marketing of low power FM transmitters as a result of a local news report featuring the transmitter. Agents located and conducted field strength measurements of eleven SKY-2000 FM transmitters in operation that were manufactured and distributed by Skywave Electronics, Rockford, IL and marketed by Morrison. The measurements revealed that all eleven transmitters were operating in excess of the authorized limits as prescribed in the Commission rules.<sup>2</sup>

3. On September 28, 1999 during an inspection of a Skywave 2000 transmitter and on

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<sup>1</sup> Section 302 of the Act, 47 U.S.C. § 302

<sup>2</sup> 47 C.F.R. § 15.239(b)

October 15, 1999 during an office interview, the Atlanta Office verbally warned Morrison regarding the penalties for continuing to market non-compliant RF devices. It was Morrison's contention that Skywave Electronics, Inc. had led him to believe (by virtue of their obtaining a Grant of Equipment Authorization/Certification and affixing a FCC Identifier to

the device) that their devices were approved for marketing. The Atlanta Office informed Morrison that it was still his responsibility as the marketer of an RF device to ensure that the device met the requirements of the Commission's rules even though the device had a FCC Identifier affixed to it. On November 25, 1999, the Atlanta Office issued Morrison an Official Notice for violating Section 302 of the Act for marketing non-compliant RF devices.<sup>3</sup> On December 2, 1999, the Atlanta Office received a written response from Morrison indicating his intent to no longer market Skywave products.

4. On August 16, 2000, an agent from the Atlanta Office inspected a low power FM transmitter operating at a restaurant in Marietta, Georgia. The device was identified as a SKY-2000 FM transmitter and was found to be operating in excess of the authorized limits as prescribed in the Commission rules.<sup>4</sup> The owner of the restaurant stated that Morrison sold them the SKY-2000 transmitter in May 2000. Morrison confirmed the sale of the device during a telephone interview with an agent of the Atlanta Office on August 17, 2000.

### **III. DISCUSSION**

5. Section 302 of the Act authorizes the Commission to regulate equipment capable of emitting radio frequency energy that may cause interference to radio communications. The Act further states that "no person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section".<sup>5</sup>

6. Morrison, as a marketer of the SKY-2000 transmitter, is responsible for ensuring that it is compliant with Commission rules.<sup>6</sup> He was repeatedly warned, verbally and in writing,<sup>7</sup> about the penalties for marketing non-compliant devices, yet, he continued to market the non-compliant device in violation of Section 302 of the Act.<sup>8</sup>

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<sup>3</sup> Section 302 of the Act, 47 U.S.C. § 302

<sup>4</sup> 47 C.F.R. § 15.239(b)

<sup>5</sup> Section 302 of the Act, 47 U.S.C. § 302

<sup>6</sup> 47 C.F.R. § 15.201(b)

<sup>7</sup> Issued an Official Notice on November 25, 1999

<sup>8</sup> Section 302 of the Act, 47 U.S.C. § 302

7. Section 503(b) of the Act, 47 U.S.C. § 503(b)(1),<sup>9</sup> provides that any person who willfully<sup>10</sup> and repeatedly<sup>11</sup> fails to comply with the terms and conditions of the Commission's rules shall be liable for a forfeiture penalty. Based on the above evidence, we find that Morrison did willfully and repeatedly violated Section 302 of the Act.<sup>12</sup>

8. Pursuant to *the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), the base forfeiture amounts are \$2,000 for the marketing of non-compliance Part 15 devices. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>13</sup> Morrison's violations were repeated and willful. Applying the *Forfeiture Policy Statement* and statutory factors to the instant case, a \$2,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>14</sup>, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules<sup>15</sup>, Mike Morrison is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for violating Section 302 of the Act.<sup>16</sup>

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<sup>9</sup> 47 U.S.C. § 503(b)(1). *See also* Section 1.80(a)(1) and (2), 47 C.F.R. § 1.80(a)(1) and (2)

<sup>10</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>11</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>12</sup> Section 302 of the Act, 47 U.S.C. § 302

<sup>13</sup> 47 U.S.C. § 503(b)(2)(D). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01 (discussion of upward and downward adjustment factors).

<sup>14</sup> 47 U.S.C. § 503(b)

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules<sup>17</sup>, within thirty days of the released date of this NOTICE OF APPARENT LIABILITY, Mike Morrison SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3248005.

12. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, Attn: Enforcement Bureau –TPSD, NAL/Acct. No. X3248005, and must include the NAL/Acct. No. X3248005.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>18</sup>

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Mike Morrison, 3880 Nowlin Road, Kennesaw, GA 30144.

#### FEDERAL COMMUNICATIONS COMMISSION

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<sup>15</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80

<sup>16</sup> Section 302 of the Act, 47 U.S.C. § 302

<sup>17</sup> 47 C.F.R. § 1.80

<sup>18</sup> See 47 C.F.R. § 1.1914

Fred L. Broce  
District Director  
Atlanta Office